

# APOLLO SQUARE

REAL ESTATE PURCHASE CONTRACT  
FOR RESIDENTIAL CONSTRUCTION  
(This is a legally binding contract)

SELLER & PROJECT INFORMATION:	
Seller (" <b>Seller</b> "):	Apollo Square, LLC
Project Name (the " <b>Project</b> "):	Apollo Square
Project's Address:	2250 Murray Holladay Road, Holladay, UT 84117
BUYER INFORMATION & CONTRACT SUMMARY:	
Buyer's Name (" <b>Buyer</b> "):	
Buyer's Address:	
Buyer's Phone #:	
Buyer's Email Address:	
Buyer's Unit Number (the " <b>Unit</b> "):	
Buyer's Parking Stall Number:	
Buyer's Storage Unit Number:	
Signing Deposit:	\$2,500.00 (\$100 of which is non-refundable)
Commitment Deposit:	10% of Purchase Price ( <i>non-refundable</i> )
Purchase Price*:	\$
Preferred Lender:	

Buyer offers to purchase the Unit described below and hereby delivers to Seller, as a deposit, the Signing Deposit stated above which, upon Acceptance of this offer by all parties (as defined in Section 23) shall be applied and/or returned as provided for in this Contract. If additional deposits are required by this Contract, an addendum identifying the amounts and dates shall be prepared and signed by the parties (the Signing Deposit, Commitment Deposit, and any other deposit provided for in this Contract are collectively referred to herein as the "**Deposits**"). Buyer and Seller are collectively referred to herein as the "**Parties**".

Signing Deposit received by: \_\_\_\_\_ on \_\_\_\_\_ (Date).

OFFER TO PURCHASE:

1. PROPERTY:

1.1 **Location.** The Signing Deposit is given to apply to the purchase of the Unit, which is a residential unit currently existing, or which will be constructed by Seller within the Project (described above). The Unit shall be as

defined in the plat for the Project (the "**Plat**"). The Unit shall include an assigned limited common area parking space and a limited common area storage space adjacent to the assigned parking stall.

1.2 **Unit Design.** Seller shall construct the Unit and related improvements in accordance with the Plat, Construction Documents (*defined in Section 9 below*), and Seller's base design specifications<sup>1</sup>, unless additional specifications are agreed to by the Parties and included in an addendum to this Contract.

1.3 **Improvements.** Seller represents that the Unit will be connected to the utility service lines and serviced by the following additional improvements: public water; natural gas; electricity; public sewer; and other (specify):  
\_\_\_\_\_.

2. PURCHASE PRICE. The Purchase Price for the Unit is as stated above.

2.1 **Method of Payment.** The Purchase Price will be paid as follows:

\$2,500.00	Signing Deposit <sup>2</sup> . Under certain conditions described in this Contract, ALL DEPOSITS MAY BECOME COMPLETELY NON-REFUNDABLE.
10% of the Purchase Price	Commitment Deposit (Due fifteen (15) calendar days after Seller's acceptance of the offer to purchase).
\$	Permanent Loan. Buyer agrees to apply for a " <b>Permanent Loan</b> " ( <i>per Section 2.3 below</i> ).
\$	Other ( <i>specify</i> ):
\$	Balance of Purchase Price in Cash at Settlement

The Purchase Price may be increased as provided in Sections 9 and 12, or as otherwise provided for in this Contract. If such increase occurs, Buyer agrees to pay the increased Purchase Price.

2.2 **Financing Condition.** (*check applicable boxes*)

(a)  a Permanent Loan shall be obtained by Buyer. Buyer's obligation to purchase the Unit IS CONDITIONED upon Buyer qualifying for the Permanent Loan. Those loans are collectively referred to as the "**Applicable Loans.**" This condition is referred to as the "**Financing Condition.**" Buyer agrees to use all reasonable efforts to diligently obtain a loan as required in this Contract.

(b)  Buyer's obligation to purchase the Unit IS NOT CONDITIONED upon Buyer qualifying for the Applicable Loans. If this Section 2.2(b) applies, Section 2.3 does not apply.

2.3 **Application for Loan.**

(a) **Loan Application.** Unless Buyer is purchasing the Unit with cash and is not obtaining financing, no later than the Application Deadline referenced in Section 30, Buyer shall apply for the Applicable Loans with the Preferred Lender indicated above. Loan Application occurs only when Buyer has: (i) completed, signed, and delivered to the Preferred Lender the initial loan application and documentation required by the Preferred Lender;

<sup>1</sup> Buyer shall select finishes for the Unit from Seller's base design specifications list (the "**Finish Selections Sheet**"), which list may include Changes (defined below) and charges for such Changes. To the extent the Finish Selections Sheet contains Changes it will be construed as a Change Order hereunder.

<sup>2</sup> If the Signing Deposit and/or Commitment Deposit will be paid in installments then Buyer must sign the Deposit Payment Agreement, to be attached as Exhibit A.

and (ii) paid all loan application fees as required by the Preferred Lender. Buyer agrees to diligently work to obtain the Applicable Loans. Buyer will promptly provide the Preferred Lender with any additional documentation as required by the Preferred Lender.

(b) *Pre-Qualification Letter.* No later than the Pre-Qualification Deadline referenced in Section 24, Buyer agrees to provide to Seller a "**Pre-Qualification Letter**" from the Preferred Lender for the Applicable Loans. Buyer agrees to diligently work to obtain the Pre-Qualification Letter. The Pre-Qualification Letter shall state that: (i) Buyer's credit report and income to debt ratios are satisfactory to the Preferred Lender; and (ii) subject only to verification of the information contained in the Loan Application, the Preferred Lender will grant the Applicable Loans.

(c) *Right to Cancel.* If the Preferred Lender fails to provide Buyer with a Pre-Qualification Letter, or if the Pre-Qualification Letter contains conditions other than those specified in Section 2.3(b), Buyer or Seller may cancel this Contract by providing written notice to the other party no later than three (3) calendar days after the Pre-Qualification Deadline; whereupon the refundable portion of the Signing Deposit shall be returned to Buyer. If this Contract is not canceled as provided in this Section 2.3(c), Buyer shall be deemed to have waived any objections regarding the lack of, or any conditions contained in the Pre-Qualification Letter.

(d) *Acceptance of Loan Terms.* Buyer agrees to accept the Permanent Loan at the interest rate offered by the Preferred Lender as of the date of Settlement. Buyer acknowledges that the loan interest rate at Settlement may exceed rates previously quoted.

(e) *Outside Lender.* If Buyer elects to use a lender other than the Preferred Lender, Buyer shall be subject to the following additional conditions and restrictions: (i) Buyer shall provide the outside lender with all documentation required by the outside lender to close at least thirty (30) days prior to Closing; (ii) Buyer shall provide to Seller a written statement from the outside lender at least ten (10) days prior to Closing that the outside lender has approved Buyer for Closing; (iii) in the event that Closing occurs after the Settlement Deadline, Buyer shall be charged an extension fee of \$500 per day between the Settlement Deadline and the actual Closing; (iv) if Buyer is unable to obtain a permanent loan from the outside lender, Buyer shall re-apply for a permanent loan from the Preferred Lender; and (v) after the Pre-Qualification, Due Diligence and Commitment Deposit Deadline, Buyer shall not switch lenders without Seller's prior written consent.

## 2.4 **Deposits.**

(a) *Non-Refundable Portion of Deposits.* Notwithstanding anything the contrary in this Contract, \$100.00 of the Signing Deposit shall be non-refundable, and after the Pre-Qualification; Due Diligence and Commitment Deposit Deadline, the entire Signing Deposit shall be non-refundable. The entire Commitment Deposit shall be non-refundable.

(b) *Due Diligence Period.* Buyer acknowledges that the period of time between the payment of the Signing Deposit and the Commitment Deposit is intended to provide Buyer with sufficient time to perform the Due Diligence (defined below) (the "**Due Diligence Period**"). Buyer's "**Due Diligence**" shall consist of Buyer's review and approval of the contents of the Seller's disclosures related to the Project, and any other evaluations and verifications of the Project and/or Unit deemed necessary or appropriate by Buyer, such as: its physical condition; the existence of any hazardous substances, environmental issues or geologic conditions associated with the Project; the costs and availability of flood insurance, if applicable; water source, availability and quality; the location of property lines; regulatory use restrictions or violations; fees for services such as HOA dues, municipal services, and utility costs; convicted sex offenders residing in proximity to the Project; and any other matters deemed

material to Buyer in making a decision to purchase the Unit. Unless otherwise provided in this Contract, all of Buyer's Due Diligence shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with Buyer's during the performance of Due Diligence. Buyer agrees to pay for any damage to the Unit or Project resulting from any such inspections during the Due Diligence. If Buyer determines during the Due Diligence Period, that the results of the Due Diligence are unacceptable, Buyer may terminate this Contract by written notice to Seller, whereupon any refundable portion of the Signing Deposit shall be remitted to Buyer. Failure to timely terminate this Contract as permitted in this subsection (b) shall be deemed Buyer's acceptance of all Due Diligence.

(c) *When Deposits Are Refundable.* Generally, the Deposits become **wholly non-refundable** following the expiration of the Due Diligence Period. If Buyer fails to cancel this Contract or resolve in writing Buyer's objections arising from Buyer's Due Diligence by the end of the Due Diligence Period, Buyer shall be deemed to have waived any condition or objection related to Buyer's Due Diligence and the Signing Deposit, and any other Deposits shall be **wholly non-refundable**. However, the refundable portion of the Deposits shall be refunded as provided in Sections 2.3(c), 9.5, 16, 26 and 27 provided that no Deposit shall be returned for any reason other than pursuant to Sections 9.5, 16, 26 and 27 after payment of the Commitment Deposit, which shall coincide with the expiration of the Due Diligence Period. There shall be no other circumstances when any part of any Deposit is refundable.

(d) *Subsequent Disqualification.* If prior to Settlement but after having provided a Pre-Qualification Letter, Buyer receives written notice from the Preferred Lender that the Preferred Lender does not approve the Permanent Loan (a "**Loan Denial**"), Buyer shall, no later than three (3) calendar days thereafter, provide a copy to Seller. Buyer or Seller may, within three (3) calendar days after Seller's receipt of such notice, cancel this Contract by providing written notice to the other party and in such case, Seller shall retain all Deposits.

(e) *Application of Deposits.* Seller may apply, co-mingle, and use the Deposits in the construction of the Unit and/or the Project, in the normal course of business operations, or as it deems appropriate in its discretion, and shall have no obligation to hold, escrow, or otherwise segregate the Deposits. In any return of any Deposit, no interest shall be paid to Buyer.

3. SETTLEMENT AND CLOSING. Seller shall provide Buyer written notice of Substantial Completion of the Unit. Settlement shall take place within ten (10) days of Seller providing notice to Buyer of Substantial Completion of the Unit, or on a date upon which Buyer and Seller agree in writing if they agree upon any different date. "**Settlement**" shall occur only when all of the following have been completed: (a) Buyer and Seller have signed and delivered to each other (or to the escrow/closing office), all documents required by this Contract, by the Preferred Lender, by written escrow instructions, and by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow/closing office, as appropriate, in the form of collected or cleared funds; and (c) any monies required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the escrow/closing office, as appropriate, in the form of collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year, and interest on assumed obligations shall be prorated at Settlement as set forth in this Section. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in Section 24, unless otherwise agreed to in writing by the Parties. Such writing could include the settlement statement. The transaction will be considered closed when Settlement has been completed, and when all of the following have been completed: (a) the proceeds of any new loan have been delivered by the Preferred Lender to Seller (or to the escrow/closing office); and (b) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in parts (a) and (b) of the preceding sentence shall be completed within

four (4) calendar days after Settlement. Settlement shall occur at the location designated by Seller and Seller may select all closing agents and companies providing title insurance.

3.1 **Walk-Through Inspection.** Upon at least five (5) days' notice by Seller to Buyer prior to Settlement, Seller shall be available to conduct a "walk-through" inspection of the Unit and shall create a list of incomplete items or items needing service (the "**Service List**"). Items shall be placed on the Service List as agreed to by Buyer and Seller. Buyer agrees that notwithstanding items on the Service List or any disagreement regarding the Service List, Settlement shall not be delayed if the Unit is substantially complete. Seller agrees to complete the items on the Service List reasonably promptly, under the circumstances, either before or within a reasonable time after Closing, but in no event more than six (6) months after Closing. The failure of Buyer to request or appear at a walk-through inspection prior to Settlement or to identify certain items on the Service List, shall constitute a waiver by Buyer of the right to claim repairs for any damage or defect that could have been caused by Buyer or others after Closing, including but not limited to cracks, breaks, mars, scratches, scrapes, or other similar types of damage in any surface, material, or item.

4. **POSSESSION.** Seller shall deliver physical possession of the Unit to Buyer promptly after the transaction is considered closed. Buyer shall not occupy, reside in, or move any personal property into the Unit until the transaction is considered closed and Seller has delivered physical possession.

5. **CONFIRMATION OF AGENCY DISCLOSURE.**

5.1 **Role of Agents.** An agent may represent, through its brokerage, a seller who wants to sell property or a buyer who wants to buy property. On occasion, an agent will represent both seller and buyer in the same transaction. When an agent represents a seller, the agent is a "**Seller's Agent**"; when representing a buyer, the agent is a "**Buyer's Agent**"; and when representing both seller and buyer, the agent is a "**Limited Agent**". A Limited Agent actively represents both the seller and buyer in the same transaction, and works to assist in them in negotiating a mutually acceptable transaction, subject to ethical rules and duties associated with providing such services. A Limited Agent has fiduciary duties to both the seller and the buyer. However, those duties are "**limited**" because the agent cannot provide to both parties undivided loyalty, full confidentiality and full disclosure of all information known to the agent. For this reason, a Limited Agent must remain neutral in the representation of a seller and buyer and may not disclose to either party information likely to weaken the bargaining position of the other. A Limited Agent must, however, disclose to both parties any material information known to the Limited Agent regarding a defect in the property and/or the ability of each party to fulfill agreed upon obligations, and must disclose information given to the Limited Agent in confidence, by either party, if the failure to disclose would be a material misrepresentation regarding the subject property. Seller and Buyer may elect to utilize a Limited Agent, but Buyer is hereby advised that it is not required to accept a limited agency situation and that Buyer is entitled to be represented by a Buyer's Agent. However, it is the business practice of Seller to participate in "in-house sales" which may provide a cost-savings to both parties. By initialing below, Buyer and Seller may indicate their consent to a limited agency related to this Contract. Buyer further acknowledges and agrees that the Brokerage Disclaimer attached to this Contract or otherwise referenced herein (the "**Brokerage Disclaimer**") is incorporated herein and forms an integral part hereof. Such attachment may include a separate Limited Agency Consent Agreement, which, if applicable, is incorporated herein by reference. Buyer further acknowledges and agrees that the Brokerage Disclaimer (including its associated documents) shall survive the Closing. Buyer agrees to execute and deliver a copy of the Brokerage Disclaimer to Seller.

*(Remainder of this page intentionally left blank)*

At the signing of this Contract the following are the agents associated with this Contract and their role(s):

<i>Role:</i>	<i>Name:</i>	<i>Represents:</i>
Listing Agent	Cindy White	<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input type="checkbox"/> both Buyer and Seller as a Limited Agent
Selling Agent		<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input type="checkbox"/> both Buyer and Seller as a Limited Agent
Listing Broker	BHHS Utah Properties	<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input type="checkbox"/> both Buyer and Seller as a Limited Agent
Selling Broker		<input type="checkbox"/> Seller <input type="checkbox"/> Buyer <input type="checkbox"/> both Buyer and Seller as a Limited Agent

Seller's Initials  Buyer's Initials

**5.2 Additional Agency Disclosures:**

(a) *Seller's Agent.* Seller hereby discloses that it or one (1) or more of its principals are licensed as a real estate agent or real estate broker in the State of Utah. However, except as specifically stated herein or in an addendum to this Contract, Seller (including any of its principals, as individuals) shall not be acting as an agent for Buyer. Buyer acknowledges that it: (i) shall not seek advice from Seller related to the value or condition of the Unit; (ii) is not expecting Seller to perform any services generally provided by a real estate agent; and (iii) will be solely responsible to engage a Buyer's Agent to the extent Buyer desires to obtain any such services.

(b) *Professional Advice.* As stated above, Seller shall not provide Buyer with professional advice regarding the physical condition of the Unit or regarding legal or tax matters. Buyer is hereby advised not to rely on Seller, or any representatives of Seller, for a determination regarding the physical or legal condition of the Unit, including, but not limited to: past or present compliance with zoning and building code requirements; the condition of any appliances; the condition of heating/cooling, plumbing, and electrical fixtures and equipment; sewer problems; moisture or other problems in the roof or foundation; the availability and location of utilities; the location of property lines; and the exact square footage of the Unit. Buyer acknowledges that it shall engage the services of appropriate professionals to conduct inspections, investigations, tests, surveys, and other evaluations of the Unit at Buyer's expense. If Buyer fails to do so, Buyer is acting contrary to the advice of Seller.

6. **TITLE INSURANCE.** Seller agrees to pay at Settlement for a standard-coverage owner's policy of title insurance from a title insurer of Seller's choosing insuring Buyer in the amount of the Purchase Price. Buyer acknowledges that additional title insurance coverage against mechanic's liens may be available, at Buyer's expense, through an extended coverage or plain language title policy. Buyer assumes all risk of any claim resulting from any mechanic's lien unless Buyer purchases extended coverage. Buyer is advised to consult with a title insurance company during the Due Diligence Period regarding the availability and cost of such coverage and to purchase such coverage if Buyer desires.

7. **BUYER INDEMNIFICATION.** Buyer agrees to indemnify and defend Seller and Seller Related Parties from any lawsuit, claim, expense, injury, cause of action, demand, suit, and controversy brought or asserted against Seller or incurred by Seller arising out of or related to Buyer's dealings with the Community Association (defined below) and/or any action brought by the Community Association related to or arising out of Buyer's purchase of the Unit or arising out of or related to the Unit. Seller Related Parties include any company or person with an ownership interest in Seller, any director, officer, member, employee, or manager of that person or entity or of Seller, any builder of the Unit, and any officer, director, member, employee, or manager of the builder.

8. **BUYER ACKNOWLEDGEMENT AND ACCEPTANCE.** Buyer acknowledges, warrants, agrees, and accepts, that:

8.1 **Community Association.** If the Unit is located within a community association (condominium, PUD, PRD, HOA, townhome, or however otherwise designated) (a "**Community Association**") then: (1) there are recorded and

unrecorded documents binding on the owners of Units that may include but are not limited to a declaration, Bylaws, Articles of Incorporation, Rules; all referred to herein as the ("**Governing Documents**")"; (2) any of the Governing Documents may be amended and/or changed over the objection of Buyer, and new and previously inapplicable restrictions or obligations may be imposed in the future; (3) assessments may be due and payable each month by owners of Units and special assessments may be imposed at any time in addition to monthly assessments; (4) assessments may change and increase; (5) a homeowner association will be in control of many aspects of the Community Association and it may be under the control of other Unit owners and/or a developer or other entity; (6) during a period of declarant control, the declarant, as identified in the Governing Documents, may be in control and have the ability without the need for any approval or consent of unit owners, to amend or change documents (including the Governing Documents), plats, and any other aspect of the physical layout or legal aspects of the Project or the Community Association, as provided for in the Governing Documents; and (7) the Unit and common areas in the Project may be bound by restrictions in the Governing Documents and applicable law, which may restrict the use and occupancy of the Unit and common areas, the leasing and renting of the Unit, how the Units and common area may or must be maintained and improved, and who may use, maintain, and improve the common area. This will include restrictions on the use of the Unit including prohibiting smoking and other activities that may be considered a nuisance to other unit owners, limiting access to amenities, limiting parking, imposing restrictions and requiring approval procedures for a Unit's exterior appearance including architectural designs, landscaping, decorations, displays, and the flying of flags, and limiting the number of pets allowed in a Unit.

8.2 **Model Homes and Brochures.** Model homes are typically constructed, and advertising brochures and materials are typically produced depicting Units with many extra and enhanced features to demonstrate the availability of options and extra features. The Units will not have any extra or enhanced features unless otherwise provided for in this Contract or addendums to this Contract. Extra or enhanced features may include, but are not limited to; upgraded floor and wall coverings, two tone paint, crown and base molding, countertop upgrades such as granite or other materials, upgraded fixtures such as dish washers, refrigerators, washers and dryers, sinks, faucets, outlets, and toilets; upgraded or typically not included window coverings such as shutters or blinds, intercoms and other electronics, upgraded windows and doors, upgraded banisters and carpentry work, and the inclusion of appliances or fixtures that are not typically included. Buyer shall not rely upon any model home, advertising brochures or materials, or oral statements of individuals as a representation of the features of the Unit.

8.3 **Landscaping.** Within a reasonable time of the completion of the construction of the buildings in the Project, Seller shall complete the landscaping of the common areas. The color, style, scope, and type of such landscaping shall be entirely within Seller's sole discretion.

8.4 **Soil Conditions.** Seller has conducted soil tests as applicable to the governmental unit. Seller makes no representations, warranties, or other guarantees regarding the soil conditions of property constituting the Project and offers no representations, warranties, or guarantees about the risks or effects of any earthquake, liquefaction, flooding, settling, or other loss or damage that might result from these or similar events. Buyer accepts the soil and subsurface conditions and any risk of any aforementioned event "*as is*" and agrees to pay for and perform any geotechnical or other surveys or analysis in Buyer's own discretion as buyer deems appropriate to identify and quantify any such risks.

8.5 **Plat Recording.** Seller has recorded the Plat with the applicable county recorder's office. Seller makes no representations, warranties, or other guarantees regarding the Plat, Unit size, location or dimensions. The Plat is a matter of public record and is also available from Seller upon Buyer's written request.

8.6 **Other Conditions.** Seller makes no representations, warranties, or guarantees regarding: (1) the size, location, shape, color, characteristics, use, or style of neighboring homes, buildings, structures, or fixtures; (2) the location of power or other utility lines; (3) the location, quality, number, or availability of schools, emergency services, cellular services, cable or satellite services, or other services; (4) views from or to the Unit or the Project; (5) the present, past, or future placement of utility, cable television, municipal or other boxes, lines, cables, wires, pipes, signs, access points, or installations, on, over, or under the Unit or the Project; and (6) any city, county, state, federal, or other laws, ordinances, or zoning requirements or limitations related to the use or any other aspect of the Unit or the Project.

8.7 **Loans and Interest Rates.** Seller makes no representations, warranties, or guarantees regarding the availability of any interest rates, loans, or financing. Buyer is solely responsible for obtaining financing for the purchase of the Unit.

8.8 **Unit Size and Layout.** The Unit size, boundaries, and layout can be changed, modified, and moved until Closing. Buyer accepts any such change so long as the size and location of the Unit does not materially change from any original plans and specifications. If any such changes results in a material change to the original estimated size or location of the Unit, Buyer may cancel this Contract prior to Settlement. If this Contract is not cancelled pursuant to this paragraph, Buyer accepts any final size and location of the Unit and waives any deviation in the size or location of the Unit. Buyer hereby agrees and consents to Seller or a developer's amendment to the Plat after Closing so long as Seller's Unit's dimensions and location are not substantially modified by the amendment. A "material" change in size for purposes of this paragraph shall be a change of more than ten percent.

8.9 **Construction Timing.** Seller agrees to take reasonable efforts to construct the Unit. Buyer accepts all risks associated with any particular date related to the date construction is completed, including any risks associated with interest rate changes or expired interest rate locks. Buyer is solely responsible for deciding if and when to lock interest rates.

8.10 **Environmental Risk.** Seller makes no warranties, express or implied, about existing or future health hazards or environmental conditions on the Unit, the Project, or from adjacent sources, including, but not limited to, exposure to radon gas, electric and magnetic fields, shifting or instability of soil conditions and contamination of the Unit or the surrounding air, water or soil from any sources or in any manner. Buyer is advised that the continued presence of moisture in the Unit (from leaks, condensation, spills, etc.) can cause the growth of mold, which may cause allergenic reactions and other health problems in some individuals. Upon occupying the Unit, Buyer is responsible for implementing an inspection and maintenance program for the identification and elimination of moisture in the Unit that could give rise to the growth of mold or other conditions detrimental to functioning of the Unit or the health of its occupants. Any leak or the presence of moisture that is covered by Seller's Limited Warranty will be addressed under the Limited Warranty, but Buyer's failure to implement an effective maintenance program or the failure to promptly notify Seller of warranty claims will negate Seller's responsibility (if any) for any property damage, personal injury, or other loss, damage or liability resulting directly or indirectly from the presence of mold or other harmful organisms.

8.11 **Construction Access.** Buyer agrees that if the Unit is being constructed, during the period of construction Seller and its agents shall have the exclusive right to access the Unit and Buyer shall have no right to access the Unit or the Project until the walk-through inspection described in Section 3.1 above occurs. Buyer accessing the Unit or the Project prior to the walk-through inspection shall be a material breach of this Contract and if such occurs then Seller may (in its sole discretion) elect to terminate this Contract and retain the Deposits as damages.



8.12 **Unavoidable Delays.** In the event of any delay in Seller's responsibilities under this Contract due to interruption of transport, availability of materials, strikes, fire, flood, weather, governmental regulations, acts of God, or similar occurrences beyond the control of Seller, applicable deadlines shall be extended for a reasonable period based on the nature of the delay. Seller agrees to provide Buyer written notice of the nature of any such delay.

8.13 **Buyer has No Interest in Unit Until Transaction is Closed.** Buyer has no interest, whether equitable, ownership, legal, or otherwise in the Unit or the common area of the Project as a result of the pendency of this Contract or any breach or default under this Contract by Seller. Buyer's interest in the Unit and the common area of the Project arises only when the transaction is closed. Buyer shall have no right to record any notice of interest, lis pendens, lien, or other document on the title to the Unit or the common area of the Project resulting from this Contract or any breach or alleged breach of this Contract by Seller.

## 9. CHANGE ORDERS.

9.1 **Specific Definitions.** Other than as stated in this Contract, the following terms shall apply exclusively to this Section 9.

**"Change"** shall mean an agreed-upon modification to Seller's scope of Work that affects the Contract Price and/or the Contract Time.

**"Change Order"** shall mean Seller's template **"Change Order"**, which is a written instrument describing a Change and specifying any appropriate adjustments in the Contract Price and/or the Contract Time.

**"Change Order Proposal"** shall mean a written proposal by Seller covering proposed Change Order Work.

**"Contract Price"** shall mean Seller's compensation for performing the Work.

**"Contract Time"** shall mean the period of time for performance of the Work as indicated in the approved Project Schedule, and any subsequent revisions thereto approved by Buyer by Change Order.

**"Construction Documents"** shall mean the final Drawings and Specifications prepared by Seller from which the Work is actually constructed.

**"Delay"** shall mean any delay or interruption in the progress of the Work as anticipated based on the Project Schedule.

**"Drawings"** shall mean graphic or pictorial portions of the Work, wherever located and whenever issued, which show, among other things, the location and dimensions of the Work, generally including, but not limited to, plans, elevations, sections, details, schedules and diagrams.

**"Final Completion"** shall mean that Seller has satisfactorily completed all of the Work.

**"Final Completion Date"** shall mean the date reasonably determined by Buyer when the requirements of Final Completion have been met.

**"Governmental Authority"** shall mean any Federal, State, local and quasi-governmental agency having jurisdiction over the Unit.

*"Project Schedule"* shall mean the schedule prepared by Seller detailing the sequence and time durations for the Work, including any approved revisions or updates thereto.

*"Specifications"* shall mean written requirements for the Work prepared by Seller.

*"Subcontractor"* shall mean a person or entity having a Subcontract directly with Seller to perform a portion of the Work or to supply materials and/or equipment. The term *"Subcontractor"* also includes Suppliers.

*"Substantial Completion Date"* shall mean the date when the Unit has attained "substantial completion", as determined by Seller in its reasonable discretion.

*"Supplier"* shall mean a person or entity that supplies materials and/or equipment to Seller or to a Subcontractor.

*"Time Extension"* shall mean the grant by Seller to Buyer of additional time to complete the Work or discrete portions thereof, in connection with a Change Order and/or other cause of Delay.

*"Unit Price"* shall mean the price for a specified unit of repetitive Work.

*"Work"* means all work to be performed by Seller under this Contract, and includes all labor, materials, equipment, supplies, supervision and administration of the Work provided under the terms of this Contract.

## 9.2 *Change Order Process.*

(a) Buyer and Seller reserve the right to make Changes in the Work at any time, with corresponding equitable adjustments in the Contract Price and the Contract Time. All such Changes shall be subject to a written Change Order signed by Buyer and Seller. Seller shall also obtain any approvals from Governmental Authorities that may be required in connection with the Change, at Buyer's expense. For the sake of clarity, Seller may make elective modifications during the Unit's construction process without a Change Order, which modifications shall be constructed at Seller's sole cost and expense.

(b) Unless otherwise provided in this Contract or in the applicable Change Order, adjustments to the Contract Price for Changes shall include costs for labor (including for Subcontractors); materials, equipment; taxes; insurance; permits; inspections; overhead and profit.

(c) Changes Orders may be priced on one of the following bases, at the sole discretion of Seller:

- i. lump sum price;
- ii. Unit Prices previously agreed to by Buyer in writing; and/or
- iii. time & materials.

(d) Within ten (10) Days after a request by Buyer, Seller shall submit a Change Order Proposal with pricing, setting forth in detail (with suitable breakdowns by trades and Work classifications), Seller's estimate of: (1) the increased cost or deduction applicable to the proposed Change; (2) any necessary changes to the Construction Documents; and (3) adjustments to the Project Schedule (including the Substantial Completion Date

and/or the Final Completion Date) which would be necessary in connection with implementation of Seller's Change Order Proposal.

(e) If Buyer approves Seller's Change Order Proposal, Seller shall issue a written Change Order to be signed by Buyer and Seller and the Contract Price and the Contract Time shall be adjusted, if necessary, in accordance with the terms of such Change Order. All other terms and conditions of this Contract shall remain in full force and effect.

### 9.3 *Effectiveness of Change Orders.*

(a) A Change Order shall be effective only when signed by Buyer and Seller.

(b) Seller shall issue copies of all Change Orders to the appropriate Subcontractors.

(c) Seller shall bill promptly for Change Orders based on a consolidation of the trades involved in implementing the Change Order.

(d) For changes that Buyer authorizes to be performed on a time & materials basis, Seller shall perform the Work first, and then submit an invoice to Buyer (and Buyer's lender, if applicable) covering the time & materials costs, which invoice(s) shall be paid by Buyer (or Buyer's lender) within thirty (30) days of receipt thereof.

### 9.4 *Change Order Fees & Markups.*

(a) Seller shall charge a \$250.00 administrative fee for the processing of each Change Order.

(b) Seller may either integrate markups related to Change Order Work within a Change Order or identify the cost of such Work and markup separately, at Seller's sole discretion.

i. Seller's minimum markup on Change Order Work performed by Seller's own forces is fifteen percent (15%), which is comprised of: (1) ten percent (10%) markup on labor, materials and equipment; (2) five percent (5%) profit.

ii. Seller's markup on Subcontractor Change Orders is: (1) fifteen percent (15%) for Subcontractor profit and overhead; and (2) five percent (5%) profit for Seller.

9.5 *Special Circumstances Change Order.* Notwithstanding anything to the contrary set forth herein, in the event unanticipated circumstances arise that require modifications to the Unit, through no fault of Seller, Seller shall have the authority to issue "*Special Circumstances Change Orders*" without the prior written approval of Buyer. In such event, Seller shall: (1) promptly notify Buyer that a Special Circumstances Change Order has been issued, which notice shall set forth the reason giving rise to the issuance of the same; and (2) furnish Buyer with a copy of the Special Circumstances Change Order. For example, if, during the construction of the Unit, the price associated with any or all of the building materials, equipment, appliances or fixtures utilized related to such construction significantly increases (as determined by Seller, in its reasonable discretion), through no fault of Seller, the Purchase Price shall be equitably adjusted by an amount reasonably necessary to cover any such price increases, which adjustment shall be memorialized as an Special Circumstances Change Order. Price increases may be documented through quotes, invoices, or receipts, which shall be presented to Buyer upon request. Where the delivery of building materials is delayed as a result of shortage or unavailability, Seller shall not be liable for any additional costs or damages associated with such delay(s). For the sake of providing clarity, an adjustment to

the Purchase Price as provided in this Section shall be construed as a Change Order and in no event shall such price adjustment(s) be construed as providing Buyer with any right to cancel or otherwise terminate this Contract; however, notwithstanding anything in this Contract to the contrary, in the event that Special Circumstances Change Orders increase the Purchase Price (which includes any and all Change Orders) by more than five percent (5%), then within fifteen (15) days following delivery of the Special Circumstance Change Order that caused such increase, Buyer or Seller may, but is not required to, terminate this Contract upon written notice to the other party. The Commitment Deposit, but no other non-refundable deposit, may be refunded to Buyer, but only if this Contract is terminated pursuant to this Section 9.5.

9.6 **Change Order-related Time Extensions.** Each Change Order shall specify whether Seller is entitled to a related Time Extension.

## 10. WARRANTIES AND REPRESENTATIONS.

10.1 **Condition of Title.** Seller represents that Seller will convey good and marketable title to Buyer at Closing by general warranty deed. Buyer agrees to accept title to the Unit subject to: easements; deed restrictions; covenants, conditions and restrictions; recorded bylaws; Governing Documents; rights-of-way; and subject to the contents of and exceptions in any Commitment for Title Insurance related to the purchase. Buyer agrees to be responsible for taxes, assessments, homeowner's association dues, utilities, and other services provided to the Unit after Closing. If Seller owns the Unit, by Closing Seller will pay in full all mortgages, trust deeds, judgments, mechanic's liens and tax liens recorded against the Unit and identified in the Commitment for Title Insurance. Seller makes no representation or warranty regarding boundaries, encroachments, or other defects in title.

10.2 **Condition of Unit.** Seller warranties against defects in workmanship and materials, for a period of twelve (12) months from the date of settlement, the following items (except for those consumer products listed below): (i) the plumbing system, (ii) the heating system; (iii) the roof (against leaks); (iv) the electrical wiring system; (v) doors, including hardware (not including adjustments for Buyer's carpet; (vi) windows; (vii) electric switches and receptacles; and (viii) plumbing fixtures (the "**Limited Warranty**"). Seller hereby assigns to Buyer all rights under manufacturers' warranties on appliances and items of equipment included in the home. Seller does not warrant consumer products since they are covered by the manufacturer's warranty. The following are consumer products as defined by the Magnuson-Moss Warranty Act and are not covered by this limited warranty: (i) exhaust fan; (ii) thermostat; (iii) furnace; (iv) air conditioning system; (v) humidifier; (vi) chimes; (vii) garbage disposal; (viii) water heater; (ix) range; (x) oven; (xi) dishwasher; (xii) oven hood; and (xiii) microwave. Additionally, Seller does not assume responsibility for: (i) damage due to ordinary wear and tear, or abusive use; (ii) defects which are the result of inherent characteristics of the material used; (iii) loss of injury caused in any way by the elements and acts of God; (iv) conditions resulting from condensation on, or expansion and/or contraction of materials; (v) decoration over newly installed interior walls; (vi) maintenance items; or (vii) due to settlement of ground and frost action. The foregoing fully describes the extent of the Limited Warranty and such warranty is the only express warranty Seller provides related to the Unit. The Limited Warranty is not transferable. Any obligation under it terminates if the Unit is resold or shall cease to be occupied by Buyer. UPON COMPLETION AND BUYER'S ACCEPTANCE OF THE UNIT, IT IS UNDERSTOOD AND AGREED THAT SELLER'S RESPONSIBILITY FOR THE CONSTRUCTION OF THE UNIT IS CONFINED TO AND LIMITED BY THE WARRANTIES AND THE PERFORMANCE STANDARDS AND REMEDIES PROVIDED IN THE LIMITED WARRANTY. ACCORDINGLY, THE RESOLUTION OF CONSTRUCTION DEFECT CLAIMS FOLLOWING THE CLOSING WILL BE STRICTLY SUBJECT TO THE WARRANTY STANDARDS IN THE LIMITED WARRANTY. As to items installed in the Unit, such as any air conditioner, water heater, refrigerator, range, dishwasher and other appliances, equipment or "*consumer products*," as defined by the Federal Trade Commission, Seller agrees to assign Buyer any manufacturer's warranty, without recourse, and offers no warranty on any such items. Buyer acknowledges and agrees that Seller itself is making no warranty as to such items. TO

THE EXTENT ALLOWED BY LAW AND SUBJECT ONLY TO THE LIMITED WARRANTY OFFERED BY SELLER, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF FITNESS, MERCHANTABILITY, OR GOOD AND WORKMANLIKE CONSTRUCTION, ARE DISCLAIMED AND EXCLUDED AND BUYER ACCEPTS UNIT "AS IS." If Buyer believes any verbal representation or warranty has been made and is enforceable against Seller, whether by any representative or agent of Seller or by anyone else, it shall be a condition of the enforcement of any such verbal or other representation or warranty that Buyer disclose any alleged representation or warranty, in writing at least ten (10) prior to the Settlement. No verbal or other representation or warranty made before, at the time of, or after this Contract is entered into shall be enforceable unless reduced to writing and agreed to and signed by the Parties. Buyer acknowledges that Seller is specifically relying upon this requirement and is proceeding with the Settlement and Closing under the terms of this written Contract in specific reliance upon the condition that no other representations or warranties are offered by Seller other than as identified in this Contract.

11. **SUBSTANTIAL COMPLETION.** The Unit shall be considered "***Substantially Complete***" when occupancy of the Unit is allowable under the rules, ordinances, and laws of the appropriate civil jurisdiction in which the Unit is located. Seller shall provide Buyer written notice of Substantial Completion of the Unit.

12. **VARIATIONS IN MATERIALS, COLORS, FIXTURES, AND DIMENSIONS.** The Plans & Specifications are a description of the materials to be used in constructing and finishing the Unit. Buyer's selection of certain colors, grades and types of finishing materials (including appliances, floor coverings, fixtures, cabinets, etc.) may change the Purchase Price. Seller agrees to take reasonable efforts to construct the Unit in substantial compliance with the Plans & Specifications. Buyer acknowledges that the Unit, upon Substantial Completion, may vary from any exact dimension or specification. Unless otherwise specified in an addendum to this Contract, Seller may select any finish materials, colors, and styles. Buyer accepts and agrees that color and material selections may or may not match identically to selections made from samples and other materials and brochures and further agrees to accept any such variations. Buyer acknowledges and agrees that certain fixtures, appliances, or finish materials may not be reasonable available during construction for any number of reasons and further agrees to accept reasonable substitutes of similar grade and quality.

13. **AUTHORITY OF SIGNERS.** If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company, or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer or Seller.

14. **ENTIRE CONTRACT.** This Contract together with its addenda, any attached exhibits or referenced plans and specifications, change orders, and Seller Disclosures, constitutes the entire Contract between the Parties and supersedes and replaces any and all prior or contemporaneous oral or written discussions, negotiations, representations, warranties, understandings, agreements, or contracts, and neither Buyer or Seller is relying on any prior or contemporaneous oral or written discussions, negotiations, representations, warranties, understandings, agreements, or contracts with respect to the subject matter of this Contract. This Contract cannot be amended or modified without a writing signed by Buyer and Seller specifically amending or modifying this Contract. Buyer may not assign this Contract. This Contract shall be construed applying the laws of Utah.

15. **DISPUTE RESOLUTION.**

15.1 ***Mandatory Mediation.*** The Parties agree that any dispute, arising prior to or after Closing, related to this Contract may (upon mutual agreement of the Parties) first be submitted to mediation. If the Parties agree to mediation, the dispute shall be submitted to mediation through a mediation provider mutually agreed upon by

the Parties. Buyer and Seller shall bear their own respective costs related to mediation. If mediation fails, the other procedures and remedies available under this Contract shall apply.

15.2 **Binding Arbitration.** BECAUSE LITIGATION CAN BE VERY EXPENSIVE, BURDENSOME AND TIME CONSUMING, BUYER AND SELLER AGREE THAT IT IS IN THEIR MUTUAL BEST INTERESTS TO PROVIDE A FAIR, IMPARTIAL AND EXPEDITIOUS ALTERNATIVE TO LITIGATION FOR THE RESOLUTION OF DISPUTES THAT MAY ARISE UNDER THIS CONTRACT. ACCORDINGLY, IF BUYER BELIEVES THAT SELLER HAS BREACHED SELLER'S OBLIGATION TO BUYER UNDER THIS CONTRACT, BUYER AGREES THAT (A) ANY CLAIM WITHIN THE JURISDICTIONAL LIMIT OF UTAH'S SMALL CLAIMS COURT WILL BE FILED IN A UTAH SMALL CLAIM COURT; AND (B) ANY CLAIM GREATER THAN THE JURISDICTIONAL LIMIT OF UTAH'S SMALL CLAIMS COURTS WILL BE RESOLVED BY AN INDIVIDUAL ARBITRATION CONDUCTED IN ACCORDANCE WITH THE UTAH UNIFORM ARBITRATION ACT (THE "**ARBITRATION ACT**"); PROVIDED THAT (1) THERE WILL BE ONLY ONE ARBITRATOR; (2) ANY IN-PERSON HEARINGS WILL BE HELD IN SALT LAKE COUNTY, UTAH; (3) PARTIES AND WITNESSES MAY APPEAR TELEPHONICALLY OR BY VIDEO TECHNOLOGY; AND (4) THE ARBITRATOR'S FEES AND COSTS WILL BE SHARED BETWEEN BUYER AND SELLER EQUALLY. IF EITHER PARTY FAILS TO TIMELY PAY ITS SHARE OF THE ARBITRATOR'S FEES AND COSTS, THE OTHER PARTY MAY PAY THE FEES AND COSTS, AND ALL AMOUNTS SO PAID WILL BE IMMEDIATELY DUE AND PAYABLE BY THE DEFAULTING PARTY. THE ARBITRATOR WILL BE APPOINTED BY MUTUAL AGREEMENT, OR IN ABSENCE OF PROMPT MUTUAL AGREEMENT, WILL BE AN ATTORNEY WITHOUT A DISQUALIFYING INTEREST SELECTED BY UTAH ADR SERVICES ([HTTPS://UTAHADR SERVICES.COM/](https://utahadrservices.com/)), OR IN ABSENCE OF A QUALIFYING SELECTION WITHIN A REASONABLE TIME, AS APPOINTED UNDER THE ARBITRATION ACT AT THE REQUEST OF EITHER PARTY. THE ARBITRATOR WILL SET THE RULES, PROCEDURES AND SCHEDULE FOR THE ARBITRATION, IT BEING THE INTENT OF THE PARTIES THAT THE ARBITRATION BE AS EXPEDITIOUS, INEXPENSIVE AND INFORMAL AS THE NATURE OF THE DISPUTE PERMITS (E.G., A DISPUTE THAT COULD REASONABLY BE RESOLVED IN A SINGLE HEARING USING SMALL CLAIMS COURT STYLE RULES OUGHT TO BE RESOLVED THAT MANNER). THE ARBITRATOR MAY ORDER THE EXCHANGE OF DOCUMENTS AS THE ARBITRATOR DEEMS APPROPRIATE, PROVIDED THAT ANY DOCUMENT EXCHANGE WILL BE NARROWLY LIMITED TO DOCUMENTS RELEVANT TO MATTERS PROPERLY IN DISPUTE AND THE BURDEN AND EXPENSE OF THE DOCUMENT EXCHANGE MUST BE PROPORTIONAL TO THE AMOUNT IN CONTROVERSY AND THE IMPORTANCE OF THE DOCUMENT EXCHANGE IN FACILITATING AN EXPEDITIOUS AND EFFICIENT RESOLUTION OF THE DISPUTE. AN AWARD MAY BE ENTERED AGAINST A PARTY WHO FAILS TO TIMELY RESPOND TO THE ARBITRATOR, FAILS TO APPEAR AT A DULY NOTICED HEARING OR OTHERWISE FAILS TO FULFILL THE PARTY'S OBLIGATIONS TO THE ARBITRATOR. THE ARBITRATOR MAY, IN HIS/HER DISCRETION, AWARD THE SUBSTANTIALLY PREVAILING PARTY SOME OR ALL OF THE ARBITRATOR'S FEES AND REASONABLE ATTORNEY FEES AND COSTS AS PART OF THE ARBITRATION AWARD, IT BEING THE INTENT OF THE PARTIES THAT THE SUBSTANTIALLY PREVAILING PARTY WILL BE ENTITLED TO RECOVER THE COSTS AND FEES. THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING ON THE PARTIES (EXCEPT AS OTHERWISE PROVIDED IN THE ARBITRATION ACT) AND SUBJECT TO ENFORCEMENT IN ANY COURT OF COMPETENT JURISDICTION. IN THE EVENT ANY ACTION IS FILED TO ENFORCE THE ARBITRATOR'S DECISION, THE SUBSTANTIALLY PREVAILING PARTY WILL BE ENTITLED TO RECOVER REASONABLE ATTORNEY FEES AND COSTS.

16. **DEFAULT.** Subject to the terms of the Deposit Payment Agreement (if applicable), if Buyer fails to strictly perform its obligations within the time limits set forth in this Contract, Seller may (1) retain the Signing Deposit as liquidated damages, terminate the contract, and sell the Unit to someone else; (2) return the Signing Deposit and sue Buyer to specifically enforce this Contract; and/or (3) return the Signing Deposit and pursue other remedies available in equity or at law. If Seller fails to perform any obligation under this Contract, Buyer shall provide written notice of any alleged default to Seller along with an explanation of the alleged default and a citation to the provision of this Contract alleged to have been defaulted. Thereafter, Seller shall have thirty (30) days to cure the

default. Should Seller fail or refuse to cure the default and in case of any actual default, Buyer's sole remedy shall be to terminate this Contract and obtain the return of the Signing Deposit. In no event shall Buyer be entitled to obtain specific performance of Seller's obligations in this Contract or to obtain consequential damages against Seller. Buyer hereby waives any claim against Seller related to any matter acknowledged and agreed to by Buyer in this Contract.

17. ATTORNEY FEES AND COSTS. In the event of any dispute related to this Contract other than related to the Limited Warranty (whether litigation is commenced or not), the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation under Section 15.

18. NOTICES. Except as provided in Section 23, all notices required under this Contract must be in writing (which may be by email or other electronic methods) and, if a time limit applies, received by the other party or the other party's agent no later than the applicable date referenced in this Contract.

19. ABROGATION. Except for the provisions of Sections 7, 8, 10, 13, 14, 15, 17, 28 and 29, and the express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

20. RISK OF LOSS. All risk of loss to the Unit due to any cause, except loss caused by a taking in eminent domain, shall be borne by Seller until the transaction is closed.

21. TIME IS OF THE ESSENCE; WAIVER. Time is of the essence regarding the dates set forth in this Contract. Extensions must be agreed to in writing by the Parties. Unless otherwise explicitly stated in this Contract: (a) performance under each section of this Contract which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "*days*" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., Acceptance, receipt of Seller Disclosures, etc.). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and other non-parties to this Contract, except as otherwise agreed to in writing by such non-party. Seller's waiver of any failure of Buyer to comply with the terms of this Contract shall not be construed as a waiver of any subsequent failure and Seller may demand performance of any previously waived requirement within a reasonable time after Seller's demand.

22. ELECTRONIC TRANSMISSION AND COUNTERPARTS. Facsimile (fax) or scanned transmission by email or otherwise of a signed copy of this Contract, any addenda and counteroffers, and the retransmission of any signed document shall be the same as delivery of an original. This Contract and any addenda and counteroffers may be executed in counterparts.

23. ACCEPTANCE. "*Acceptance*" occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) communicates to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

24. CONTRACT DEADLINES. Buyer and Seller agree that the following deadlines shall apply to this Contract:

Pre-Qualification Deadline	Ten (10) calendar days after the payment & Seller's receipt of the Signing Deposit.
Seller Disclosure Deadline	Ten (10) calendar days after the payment & Seller's receipt of the Signing Deposit.
Due Diligence and 1 <sup>st</sup> Commitment Deposit Deadline	Fifteen (15) calendar days after the payment & Seller's receipt of the Signing Deposit.
Settlement Deadline	Ten (10) days after Buyer's receipt of a notice of Substantial Completion.

25. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law, an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this Contract, if either of the following sections (1) or (2) is met: (1)(a) the owner entered into a written contract with either an original contractor, a factory built housing retailer, or a real estate developer; (1)(b) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed, and (1)(c) the owner paid in full the contracting entity in accordance with the written contract and any written or oral amendments to this Contract, or (2) the amount of the general contract between the owner and the original contractor totals no more than \$5,000. An owner who can establish compliance with either section (1) or (2) may perfect the owner's protection by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing. The application is available at [www.dopl.utah.gov/rlrf](http://www.dopl.utah.gov/rlrf).

26. SELLER'S GENERAL TERMINATION RIGHTS. In addition to its other termination rights provided herein, Seller may terminate this Contract prior to delivery of the notice of Substantial Completion if Seller determines, acting reasonably and in good faith, that Seller is not reasonably able to develop and sell the Unit as contemplated herein for reasons beyond Seller's reasonable control. Examples of matters beyond Seller's reasonable control include, but are not limited to, casualty events causing loss or damage to the Project; inability to secure any permits, licenses or approvals necessary for the construction of the Project; inability to secure financing for the construction of the Project on commercially reasonable terms acceptable to Seller; or material construction delays or requirements, as reasonably determined by Seller. If Seller elects to terminate this Contract pursuant to this Section, then Seller will terminate by notice to Buyer, which notice must state the reason that Seller is not reasonably able to develop and sell the Unit as contemplated herein. Upon termination of this Contract pursuant to this Section, Seller will return the Deposits to Buyer, and neither party will have further obligations to the other party under this Contract other than those that necessarily or ordinarily survive the termination of contracts (e.g. obligations associated with non-disparagement, non-interference, non-disclosure, etc.).

27. SELLER'S UNILATERAL TERMINATION RIGHT – BAD FAITH OR UNREASONABLE CONDUCT. **SELLER IS ENTERING INTO THIS CONTRACT BASED ON BUYER'S COMMITMENT TO ACT IN GOOD FAITH, TO ENGAGE SELLER'S TEAM WITH COURTESY AND CIVILITY, AND TO ACTIVELY COOPERATE WITH SELLER'S PERFORMANCE OF ITS OBLIGATIONS HEREUNDER. IF SELLER DETERMINES THAT BUYER IS NOT FULFILLING THE FOREGOING COMMITMENT, SELLER WILL HAVE THE OPTION TO TERMINATE THIS CONTRACT BY WRITTEN NOTICE TO BUYER, AND IN WHICH EVENT SELLER WILL RETURN THE DEPOSITS TO BUYER AND NEITHER PARTY WILL HAVE ANY FURTHER OBLIGATIONS TO THE OTHER PARTY UNDER THIS CONTRACT. BUYER WILL BE DEEMED TO HAVE FAILED TO FULFILL THE FOREGOING COMMITMENT IF BUYER (OR ANYONE ON BEHALF OF BUYER) (A) USES ABUSIVE, THREATENING, DISRESPECTFUL OR RUDE LANGUAGE TO ANYONE ON SELLER'S TEAM (INCLUDING EMPLOYEES, AGENTS, SUBCONTRACTORS AND REALTORS); (B) ENGAGES IN CONDUCT THAT PLACES ANY PERSON AT RISK OF DEATH OR BODILY HARM; (C) DISREGARDS SELLER'S SITE SAFETY INSTRUCTIONS; OR (D) OTHERWISE ENGAGES IN CONDUCT THAT DISRUPTS OR IMPAIRS THE ORDINARY OR EFFICIENT PERFORMANCE OF SELLER'S OBLIGATIONS UNDER THIS CONTRACT.**

28. NON-DISPARAGEMENT; NON-INTERFERENCE. Buyer agrees that for a period of five (5) years following the execution of this Contract (the "**Restricted Period**"), he/she/they will not, either on his/her/their own account or directly or indirectly in conjunction with or on behalf of any other person, disparage or otherwise speak or write negatively about Seller or the Project or cause any other person to disparage or speak or write negatively about Seller or the Project. Additionally, during the Restricted Period, Buyer shall not interfere or attempt to interfere with the relationship of Seller and any of its customers or known prospective customers, agents, vendors, or



representatives. Buyer acknowledges and agrees that Seller would be irreparably damaged if any of the provisions of this Section are not complied with in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that Seller shall be entitled to an injunction or injunctions to prevent breaches of this Section and shall have the right to specifically enforce this Section and its terms and provisions against Buyer in addition to any other remedy to which Seller may be entitled under this Contract, at law or in equity. Buyer agrees that Seller shall not be required to post any bond or other security in connection with any such equitable relief.

29. CONFIDENTIALITY. Buyer shall keep all discussions of disputes with Seller and Seller’s representatives, all settlements and decisions confidential and shall not disclose any such information, whether directly or indirectly to any third parties other than buyer’s attorneys and consultants, unless compelled to do so by an order of a court of competent jurisdiction. Buyer agrees that in the event Buyer breaches this confidentiality obligation that Seller shall be entitled to seek and obtain any and all equitable remedies, including injunctive relief and specific performance, and Buyer hereby waives any claim or defense that Seller has an adequate remedy at law for any such breach. Buyer agrees that Seller shall not be required to post any bond or other security in connection with any such equitable relief.

30. OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Unit on the above terms and conditions. If Seller does not accept with seven (7) days of Offer Reference Date (the “*Application Deadline*”), this offer shall lapse; and Seller shall return the refundable portion of the Signing Deposit to Buyer.

_____		_____		_____		_____
(Buyer’s Signature)		(Offer Date)		(Buyer’s Signature)		(Offer Date)
_____		_____		_____		_____
(Buyer’s Name)		(Phone #)		(Buyer’s Name)		(Phone #)

The later of the above Offer Dates shall be referred to as the “*Offer Reference Date*”

BUYER’S RIGHT TO CANCEL:

YOU MAY CANCEL THIS CONTRACT WITHOUT ANY CANCELLATION FEE OR OTHER PENALTY, HOWEVER, \$100 OF THE SIGNING DEPOSIT IS NON-REFUNDABLE. YOU MAY PROVIDE NOTICE OF THIS CANCELLATION BY HAND DELIVERING OR SENDING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR A DELIVERY SERVICE THAT PROVIDES PROOF OF DELIVERY, WRITTEN NOTICE OF CANCELLATION TO: SELLER AT 4685 HIGHLAND DR #224, MILLCREEK, UT 84117. THE NOTICE MUST BE DELIVERED OR POSTMARKED BY MIDNIGHT OF THE FIFTH BUSINESS DAY FOLLOWING THE DAY ON WHICH THE AGREEMENT IS SIGNED. IN COMPUTING THE NUMBER OF BUSINESS DAYS, THE DAY ON WHICH THE CONTRACT IS SIGNED IS NOT INCLUDED.

*[Remainder of this page intentionally left blank]*

CHECK ONE:

ACCEPTANCE/COUNTEROFFER/REJECTION

ACCEPTANCE OF OFFER TO PURCHASE: Seller accepts the foregoing offer on the terms and conditions specified above.

COUNTEROFFER: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. \_\_\_\_\_.

**SELLER:**

**[INSERT ENTITY NAME]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

REJECTION: Seller rejects the foregoing offer.

**SELLER:**

**[INSERT ENTITY NAME]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

DOCUMENT RECEIPT ACKNOWLEDGEMENT:

A. I acknowledge receipt of a final copy of the foregoing Contract bearing all signatures:

(Buyer's Signature)	(Date)	(Buyer's Signature)	(Date)		

Seller's Signature:

**[INSERT ENTITY NAME]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

B. The following indicated person personally caused a final copy of the foregoing Contract bearing all signatures to be  faxed,  mailed, or  hand delivered on **[Date]**, postage prepaid, to the  Seller  Buyer. Sent/Delivered by **[Insert Name]**